

## **Rule 40. Petition for Panel Rehearing**

### **(a) Time to File; Contents; Answer; Action by the Court if Granted.**

(1) **Time.** Unless the time is shortened or extended by order or local rule, a petition for panel rehearing may be filed within 14 days after entry of judgment. But in a civil case, unless an order shortens or extends the time, the petition may be filed by any party within 45 days after entry of judgment if one of the parties is:

(A) the United States;

(B) a United States agency;

(C) a United States officer or employee sued in an official capacity; or

(D) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf – including all instances in which the United States represents that person when the court of appeals' judgment is entered or files the petition for that person.

(2) **Contents.** The petition must state with particularity each point of law or fact that the petitioner believes the court has overlooked or misapprehended and must argue in support of the petition. Oral argument is not permitted.

(3) **Answer.** Unless the court requests, no answer to a petition for panel rehearing is permitted. But ordinarily rehearing will not be granted in the absence of such a request.

(4) **Action by the Court.** If a petition for panel rehearing is granted, the court may do any of the following:

(A) make a final disposition of the case without reargument;

(B) restore the case to the calendar for reargument or resubmission; or

(C) issue any other appropriate order.

**(b) Form of Petition; Length.** The petition must comply in form with Rule 32. Copies must be served and filed as Rule 31 prescribes. Unless the court permits or a local rule provides otherwise, a petition for panel rehearing must not exceed 15 pages.

#### ***Local Rule 40(a). Filing of Petition.***

*Although petitions for rehearing are filed in a great many cases, few are granted. Filing a petition solely for purposes of delay or in order merely to reargue the case is an abuse of privilege. Whenever a request for rehearing en banc is contained in a petition, such fact must be stated plainly on the cover of and in the title of the document. Only the original petition for rehearing or rehearing en banc is required unless additional copies are requested by the Clerk.*

**Local Rule 40(b). Statement of Purpose.**

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist:

- i. A material factual or legal matter was overlooked in the decision.
- ii. A change in the law occurred after the case was submitted and was overlooked by the panel.
- iii. The opinion is in conflict with a decision of the United States Supreme Court, this Court, or another court of appeals and the conflict is not addressed in the opinion.
- iv. The proceeding involves one or more questions of exceptional importance.

A petition should only be made to direct the Court's attention to one or more of the above situations. The points to be raised should be succinctly listed in counsel's statement of purpose.

**Local Rule 40(c). Time Limits for Filing Petitions.**

The Court strictly enforces the time limits for filing petitions for rehearing and petitions for rehearing en banc. The Clerk's Office will deny as untimely any petition received in the Clerk's Office later than 45 days after entry of judgment in any civil case where the United States, or an agency or officer thereof is a party, or 14 days after the entry of judgment in any other case. The only grounds for an extension of time to file a petition, or to accept an untimely petition, are as follows:

- i. the death or serious illness of counsel, or of a member of counsel's immediate family (or in the case of a party proceeding without counsel, the death or serious illness of the party or a member of the party's immediate family); or
- ii. an extraordinary circumstance wholly beyond the control of counsel or of a party proceeding without counsel.

Petitions for rehearing and petitions for en banc rehearing from incarcerated persons proceeding without the assistance of counsel are deemed filed when they are delivered to prison or jail officials. All other such petitions are deemed filed only when received in the Clerk's Office.

**Local Rule 40(d). Papers Filed After Denial of a Petition for Rehearing.**

Except for timely petitions for rehearing en banc, cost and attorney fee matters, and other matters ancillary to the filing of an application for writ of certiorari with the Supreme Court, the Office of the Clerk shall not receive motions or other papers requesting further relief in a case after the Court has denied a petition for rehearing or the time for filing a petition for rehearing has expired.

**I.O.P.-40.1. Submission of Petitions for Rehearing to the Court.** The Clerk's Office will hold any petition for rehearing or petition for rehearing en banc until the time for filing all such petitions, or any extension thereof granted in the particular case, has run. Thereafter, all petitions for rehearing in the same case will be distributed to the Court simultaneously.

**-40.2. Panel Rehearing.** The panel of judges who heard and decided the appeal will rule on the petition for rehearing. Such panel may include a senior circuit judge or a visiting judge sitting in the Fourth Circuit by designation.

If a petition for rehearing is granted, the original judgment and opinion of the Court are vacated and the case will be reheard before the original panel. The Court may direct the filing of additional briefs, or the parties may seek leave of Court to file additional briefs.

*Former I.O.P.-40.1 redesignated Local Rule 40(a) December 1, 1995; amended December 1, 1998, October 5, 2004, and April 1, 2008.*

*Former I.O.P.-40.2 amended December 1, 1994; redesignated Local Rule 40(c) December 1, 1995; amended December 1, 1998.*

*Former I.O.P.-40.5 redesignated former I.O.P.-40.4 December 1, 1994; redesignated Local Rule 40(b) December 1, 1995; amended December 1, 1998.*

*Former I.O.P.-40.7 amended January 1, 1994; redesignated former I.O.P.-40.6 December 1, 1994; redesignated Local Rule 40(d) December 1, 1995; amended December 1, 1998.*

*Former I.O.P.-40.4 redesignated former I.O.P.-40.3 December 1, 1994; redesignated I.O.P. 40.1 December 1, 1995; amended December 1, 1998.*

*Former I.O.P.-40.6 redesignated former I.O.P.-40.5 December 1, 1994; amended and redesignated I.O.P.-40.2 December 1, 1995.*

*Former I.O.P.-40.3 rescinded December 1, 1994.*